

EXPRESSING THE SENSE OF THE HOUSE OF REPRESENTATIVES THAT AMERICAN SMALL BUSINESSES ARE ENTITLED TO A SMALL BUSINESS BILL OF RIGHTS

APRIL 21, 2005.—Referred to the House Calendar and ordered to be printed

Mr. MANZULLO, from the Committee on Small Business,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H. Res. 22]

The Committee on Small Business, to whom was referred the resolution (H. Res. 22) expressing the sense of the House of Representatives that American small businesses are entitled to a Small Business Bill of Rights, having considered the same, report favorably thereon with amendments and recommend that the resolution as amended be agreed to.

The amendments are as follows:

Strike out all after the resolving clause and insert the following:

That it is the sense of the House of Representatives that American small businesses are entitled to the following Small Business Bill of Rights:

(1) The right to join together to purchase affordable health insurance for small business employees, who make up a large portion of the millions of Americans without health care coverage.

(2) The right to simplified tax laws that allow family-owned small businesses to survive over several generations and offer them incentives to grow.

(3) The right to be free from frivolous lawsuits which harm law-abiding small businesses and prevent them from creating new jobs.

(4) The right to be free of unnecessary, restrictive regulations and paperwork which waste the time and energy of small businesses while hurting production and preventing job creation.

(5) The right to relief from high energy costs, which pose a real threat to the survival of small businesses, to be accomplished by reducing the Nation's reliance on imported sources of energy and encouraging environmentally-sound domestic production and conservation of energy.

(6) The right to equal treatment, as compared to large businesses, when seeking access to start-up and expansion capital and credit.

(7) The right to open access to the Government procurement marketplace through the breaking up of large contracts to give small business owners a fair opportunity to compete for Federal contracts.

Amend the preamble to read as follows:

Whereas more than 90 percent of all American employers are small businesses;
 Whereas small businesses generate approximately 70 percent of the new jobs created in the United States each year;
 Whereas small businesses are crucial to the American economy and account for a significant majority of new product ideas and innovations;
 Whereas small businesses, together with innovation and entrepreneurship, are central to the American dream of self-improvement and individual achievement;
 Whereas 60 percent of the 45,000,000 Americans without health insurance are small business employees and their families;
 Whereas most small businesses do not provide health insurance to their employees, primarily because of the surging cost;
 Whereas the Internal Revenue Code of 1986 is exceedingly complex, making it difficult for small businesses to understand it and comply with its requirements;
 Whereas the Internal Revenue Code of 1986 discriminates, in many instances, against small businesses and self-employed persons by limiting the availability of certain tax incentives to larger firms or corporations;
 Whereas the death tax causes one-third of all family-owned small businesses to liquidate after the death of the owner;
 Whereas frivolous lawsuits and the rising costs of liability insurance represent serious threats to small business owners;
 Whereas burdensome regulations and paperwork cost small businesses more than \$5,500 per employee;
 Whereas adequate, affordable, and reliable energy supplies are essential to the success of small businesses, especially small manufacturers;
 Whereas lack of access to capital and credit stifles new business growth and economic opportunity;
 Whereas both unsound contract bundling or consolidation and the failure of various Federal agencies to closely monitor the small business goals and subcontracting plans of large businesses have dried up many procurement opportunities for small businesses; and
 Whereas Congress can help small businesses grow by establishing a climate to encourage small businesses to create jobs and offer more affordable health insurance to employees: Now, therefore, be it

PURPOSE

The purpose of this resolution is to call upon the House of Representatives for a Small Business “Bill of Rights” that gives America’s small employers the tools they need to grow their businesses and create jobs. Essentially, this resolution is a blueprint for the House of Representatives to follow regarding the top broad policy themes to focus on and resolve over the next two years. The main purpose of this resolution is to include broad small business principles that are supported by and affect a wide cross section of all small businesses throughout this Nation.

NEED FOR LEGISLATION

Over the years, various small businesses have approached Congress with issues that they believe are of great importance. It has been ten years since the last time small businesses gathered together on a nationwide basis to prioritize the top issues facing them as part of the 1995 White House Conference on Small Business. This resolution is needed to highlight the top tier policy issues that must be addressed by the House of Representatives in the 109th Congress—health care, tax relief, litigation reform, and regulatory/paperwork reduction. This is not to say that other small business issues are unimportant. However, this legislation is need-

ed to help Congress prioritize the key issues that affect the largest number of small businesses in the United States.

COMMITTEE ACTION

Related hearing(s)

On Tuesday, March 8, 2005, the Committee on Small Business held a hearing, commencing at 3:15 p.m., to hear testimony concerning H. Res. 22. The Committee received the testimony of six witnesses on one panel: Jerry Pierce, Owner of Restaurant Equipment Sales of Orlando, Florida, representing the National Federation of Independent Business (NFIB); Giovanni Coratolo, Director of Small Business Policy for the U.S. Chamber of Commerce; Todd McCracken, President of the National Small Business Association (NSBA); Barbara Kasoff, co-founder of Women Impacting Public Policy (WIPP); Karen Kerrigan, President & CEO of the Small Business & Entrepreneurship Council (SBE Council); and Sheila Brooks, President of SRB Productions of Washington, DC.

Jerry Pierce, Giovanni Coratolo, and Karen Kerrigan testified as to the accuracy of H. Res. 22 in terms of the top nationwide issues facing the small business members as part of NFIB, the U.S. Chamber, and the SBE Council respectively and urged its adoption by the Committee. Each one of these associations recently surveyed their membership and the issues outlined in H. Res. 22—health care, tax relief, litigation reform, and regulatory/paperwork reduction—came back from their rank-and-file members as their top recommendations for change. Todd McCracken of NSBA disagreed with the concept of Association Health Plans (AHPs) but agreed that health care, tax relief, and regulatory reform remained the top concerns of small business. He also added that small business access to capital was a top tier issue. Barbara Kasoff of WIPP listed the priorities of women business owners: health care, energy, Social Security reform, tax reform, and tort reform. Finally, Sheila Brooks, the witness requested by the minority who is a small business owner but not directly tied to any national small business organization, testified from her perspective of the importance of open access to procurement opportunities for small businesses and the efficacy of the 8(a) minority business development and set-aside program in particular.

The hearing concluded that H. Res. 22 did have merit by focusing the attention of the top issues facing the vast majority of small business owners nationwide but could be improved to take into account some of the suggestions of the other witnesses dealing with access to capital, energy, and procurement.

Consideration of H. Res. 22

At 2:06 p.m. on April 6, 2005, the Committee on Small Business met to consider and report two resolutions, including H. Res. 22. The Chairman declared the resolution open for amendment, and the first action was consideration of an amendment offered by Representative Ric Keller of Florida. The amendment contained three additional policy areas that were not contained in H. Res. 22 as introduced but were discussed at the March 8, 2005 hearing. These issue areas included equitable treatment for small business in ac-

cess to capital, relief from high energy costs, and open access to the Government procurement marketplace.

The Chairman then placed a time limit on each amendment to eight minutes apiece—four minutes for each side. Ms. Velázquez objected and called for a vote to overrule the Chair. The Chairman was sustained in his ruling by a vote of 12 to 10.

Roll Call: 1 Bill: H.Res. 22 Date: April 6, 2005

Motion: 1 Result: Approved 12-10

Sponsor/Amendment: Manzullo/Sustain ruling of the chair to limit debate on amendments to 8 minutes apiece (4 minutes each side)

<u>Members—GOP</u>	<u>Aye</u>	<u>No</u>	<u>Present</u>	<u>Not Voting</u>
Chairman Manzullo	X			
Mr. Bartlett	X			
Ms. Kelly				X
Mr. Chabot	X			
Mr. Graves	X			
Mr. Akin	X			
Mr. Shuster				X
Ms. Musgrave	X			
Mr. Bradley	X			
Mr. King				X
Mr. McCotter	X			
Mr. Keller	X			
Mr. Poe	X			
Mr. Sodrel	X			
Mr. Fortenberry				X
Mr. Fitzpatrick	X			
Mr. Westmoreland				X
Mr. Gohmert				X

<u>Members—Democrat</u>	<u>Aye</u>	<u>No</u>	<u>Present</u>	<u>Not Voting</u>
Ms. Velázquez		X		
Ms. Millender-McDonald				X
Mr. Udall				X
Mr. Lipinski		X		
Mr. Faleomavaega				X
Dr. Christensen				X
Mr. Davis				X
Mr. Case		X		
Ms. Bordallo		X		
Mr. Grijalva		X		
Mr. Michaud		X		
Ms. Sánchez		X		
Mr. Barrow		X		
Ms. Bean		X		
Ms. Moore		X		

Ms. Velázquez sought to perfect the Keller amendment by offering her amendment to the Keller amendment. This amendment sought to replace the procurement language already in the Keller amendment to include more detailed policy proscriptions such as small businesses must be able to challenge Federal contracts that deny them opportunity in a balanced appeals system administrated by a non-biased third-party arbiter. The amendment also calls on those agencies that fail to achieve their small business contracting goals should no longer be able to bundle contracts until the shortfalls are corrected. Finally, the amendment calls on improving the confidence that small businesses need to have in the Government to accurately and correctly monitor their participation in the Federal marketplace. The amendment was defeated by a vote of 13 to 11 mainly because the language already in the Keller amendment sufficed, and these detailed policy proscriptions as contained in the Velázquez amendment were beyond the scope of the intent of the resolution.

Roll Call: 2 Bill: H.Res. 22 Date: April 6, 2005

Amendment: 1 Result: Defeated 11-13

Sponsor/Amendment: Velázquez/Procurement amendment

<u>Members—GOP</u>	<u>Aye</u>	<u>No</u>	<u>Present</u>	<u>Not Voting</u>
Chairman Manzullo		X		
Mr. Bartlett		X		
Ms. Kelly				X
Mr. Chabot		X		
Mr. Graves		X		
Mr. Akin		X		
Mr. Shuster				X
Ms. Musgrave		X		
Mr. Bradley		X		
Mr. King				X
Mr. McCotter		X		
Mr. Keller		X		
Mr. Poe		X		
Mr. Sodrel		X		
Mr. Fortenberry				X
Mr. Fitzpatrick		X		
Mr. Westmoreland		X		
Mr. Gohmert				X

<u>Members—Democrat</u>	<u>Aye</u>	<u>No</u>	<u>Present</u>	<u>Not Voting</u>
Ms. Velázquez	X			
Ms. Millender-McDonald				X
Mr. Udall	X			
Mr. Lipinski	X			
Mr. Faleomavaega				X
Dr. Christensen				X
Mr. Davis				X
Mr. Case	X			
Ms. Bordallo	X			
Mr. Grijalva	X			
Mr. Michaud	X			
Ms. Sánchez	X			
Mr. Barrow	X			
Ms. Bean	X			
Ms. Moore	X			

Ms. Bean offered a second amendment to the Keller amendment. This amendment sought to add more language to the access to capital provision already in the Keller amendment by calling for restoration of funding for the Small Business Administration's (SBA's) 7(a) loan program. The amendment was defeated by a vote of 15 to 10 mainly because it would unrealistically commit the House to seek perhaps as high as \$100 million in appropriations to support a program that has not seen a decrease in demand since the slightly higher fees (amounting to approximately an extra \$10 per month for the average 7(a) loan borrower) went into effect last October to bring the program down to a zero subsidy rate (or not requiring a direct Congressional appropriation anymore).

Roll Call: 3 Bill: H.Res. 22 Date: April 6, 2005

Amendment: 2 Result: Defeated 10-15

Sponsor/Amendment: Bean /7(a) funding amendment

<u>Members—GOP</u>	<u>Aye</u>	<u>No</u>	<u>Present</u>	<u>Not Voting</u>
Chairman Manzullo		X		
Mr. Bartlett		X		
Ms. Kelly		X		
Mr. Chabot		X		
Mr. Graves		X		
Mr. Akin		X		
Mr. Shuster				X
Ms. Musgrave		X		
Mr. Bradley		X		
Mr. King				X
Mr. McCotter		X		
Mr. Keller		X		
Mr. Poe		X		
Mr. Sodrel		X		
Mr. Fortenberry				X
Mr. Fitzpatrick		X		
Mr. Westmoreland		X		
Mr. Gohmert		X		

<u>Members—Democrat</u>	<u>Aye</u>	<u>No</u>	<u>Present</u>	<u>Not Voting</u>
Ms. Velázquez	X			
Ms. Millender-McDonald				X
Mr. Udall	X			
Mr. Lipinski	X			
Mr. Faleomavaega				X
Dr. Christensen				X
Mr. Davis				X
Mr. Case	X			
Ms. Bordallo	X			
Mr. Grijalva				X
Mr. Michaud	X			
Ms. Sánchez	X			
Mr. Barrow	X			
Ms. Bean	X			
Ms. Moore	X			

Ms. Velázquez then offered a third amendment to the Keller amendment. This amendment struck out the word “unsound” before the phrase “contract bundling or consolidation.” The amendment was defeated by a vote of 13 to 11 because the Keller amendment already makes clear the preference of the small business community, as in the words of President George W. Bush, “to break down large federal contracts so that small business owners have got a fair shot at federal contracting.”¹

¹Remarks of the President to the Women Entrepreneurship in the 21st Century Summit, Washington, DC March 19, 2002.

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Roll Call: 4 Bill: H.Res. 22 Date: April 6, 2005

Amendment: 3 Result: Defeated 11-13

Sponsor/Amendment: Velázquez/Strike “unsound” in front of “contract bundling”

<u>Members—GOP</u>	<u>Aye</u>	<u>No</u>	<u>Present</u>	<u>Not Voting</u>
Chairman Manzullo		X		
Mr. Bartlett		X		
Ms. Kelly		X		
Mr. Chabot		X		
Mr. Graves		X		
Mr. Akin		X		
Mr. Shuster				X
Ms. Musgrave		X		
Mr. Bradley		X		
Mr. King				X
Mr. McCotter			X	
Mr. Keller		X		
Mr. Poe		X		
Mr. Sodrel		X		
Mr. Fortenberry				X
Mr. Fitzpatrick				X
Mr. Westmoreland		X		
Mr. Gohmert		X		

<u>Members—Democrat</u>	<u>Aye</u>	<u>No</u>	<u>Present</u>	<u>Not Voting</u>
Ms. Velázquez	X			
Ms. Millender-McDonald				X
Mr. Udall	X			
Mr. Lipinski	X			
Mr. Faleomavaega				X
Dr. Christensen				X
Mr. Davis				X
Mr. Case	X			
Ms. Bordallo	X			
Mr. Grijalva	X			
Mr. Michaud	X			
Ms. Sánchez	X			
Mr. Barrow	X			
Ms. Bean	X			
Ms. Moore	X			

After these amendments were disposed and no further amendments were offered to the Keller amendment, the Keller amendment was subsequently adopted, with a quorum present, by unanimous voice vote.

Mr. Grijalva then offered an amendment to H. Res. 22. This amendment would add another small business right to a Social Security system that does not include individual private savings accounts. The amendment was defeated by a vote of 14 to 12 mainly because the small business community is divided on the subject of personal Social Security retirement accounts. This amendment defeats the purpose of the underlying resolution, which is to highlight the top tier issues that unite the vast majority of small businesses throughout this Nation.

Roll Call: 5 Bill: H.Res. 22 Date: April 6, 2005

Amendment: 4 Result: Defeated 11-14

Sponsor/Amendment: Grijalva/Social Security Amendment

<u>Members—GOP</u>	<u>Aye</u>	<u>No</u>	<u>Present</u>	<u>Not Voting</u>
Chairman Manzullo		X		
Mr. Bartlett		X		
Ms. Kelly		X		
Mr. Chabot		X		
Mr. Graves		X		
Mr. Akin		X		
Mr. Shuster				X
Ms. Musgrave		X		
Mr. Bradley		X		
Mr. King				X
Mr. McCotter		X		
Mr. Keller		X		
Mr. Poe		X		
Mr. Sodrel		X		
Mr. Fortenberry				X
Mr. Fitzpatrick				X
Mr. Westmoreland		X		
Mr. Gohmert		X		

<u>Members—Democrat</u>	<u>Aye</u>	<u>No</u>	<u>Present</u>	<u>Not Voting</u>
Ms. Velázquez	X			
Ms. Millender-McDonald				X
Mr. Udall	X			
Mr. Lipinski	X			
Mr. Faleomavaega				X
Dr. Christensen	X			
Mr. Davis	X			
Mr. Case			X	
Ms. Bordallo				X
Mr. Grijalva	X			
Mr. Michaud	X			
Ms. Sánchez	X			
Mr. Barrow	X			
Ms. Bean	X			
Ms. Moore	X			

Finally, at 3:05 p.m., Chairman Manzullo called the previous question on the underlying resolution. Mr. Barrow objected and demanded a roll call vote. The previous question was ordered by a vote of 14 to 12.

Roll Call: 6 Bill: H.Res. 22 Date: April 6, 2005

Motion: 2 Result: Approved 14-12

Sponsor/Amendment: Manzullo/Motion to Move the Previous Question

<u>Members—GOP</u>	<u>Aye</u>	<u>No</u>	<u>Present</u>	<u>Not Voting</u>
Chairman Manzullo	X			
Mr. Bartlett	X			
Ms. Kelly	X			
Mr. Chabot	X			
Mr. Graves	X			
Mr. Akin	X			
Mr. Shuster				X
Ms. Musgrave	X			
Mr. Bradley	X			
Mr. King				X
Mr. McCotter	X			
Mr. Keller	X			
Mr. Poe	X			
Mr. Sodrel	X			
Mr. Fortenberry				X
Mr. Fitzpatrick				X
Mr. Westmoreland	X			
Mr. Gohmert	X			

<u>Members—Democrat</u>	<u>Aye</u>	<u>No</u>	<u>Present</u>	<u>Not Voting</u>
Ms. Velázquez		X		
Ms. Millender-McDonald				X
Mr. Udall		X		
Mr. Lipinski		X		
Mr. Faleomavaega				X
Dr. Christensen		X		
Mr. Davis		X		
Mr. Case		X		
Ms. Bordallo				X
Mr. Grijalva		X		
Mr. Michaud		X		
Ms. Sánchez		X		
Mr. Barrow		X		
Ms. Bean		X		
Ms. Moore		X		

Chairman Manzullo then moved that the resolution be reported out of Committee, and at 3:10 p.m., by unanimous voice vote, a quorum being present, the Committee passed H. Res. 22, as amended, and ordered it reported.

SECTION-BY-SECTION ANALYSIS

The preamble of the resolution sets forth various facts relating to the state of small business in America. The resolving clause expresses the sense of the House of Representatives that American small businesses are entitled to a "Small Business Bill of Rights" in the following areas: (1) the right to join together to purchase affordable health insurance for small business employees; (2) the right to simplified tax laws that allow family-owned small businesses to survive over several generations and offer them incentives to grow; (3) the right to be free from frivolous lawsuits; (4) the right to be free of unnecessary, restrictive regulations and paperwork; (5) the right to relief from high energy costs; (6) the right to equal treatment, as compared to large businesses, when seeking access to start-up and expansion capital and credit; and (7) the right to open access to the Government procurement marketplace.

The main aim of the resolution is not to have specific proscribed policy recommendations but to outline certain key principles that have widespread agreement among the small business community. For example, the access to capital programs at the SBA certainly help in the effort to equalize the treatment of small business, as compared to large business, in their quest for loans and venture capital. But determining which SBA loan program deserves to receive a federal subsidy or not is beyond the scope of this resolution.

COMMITTEE AND CBO ESTIMATE OF COSTS

Pursuant to the Congressional Budget Act of 1974, the Committee estimates that the resolution will have no cost because it does not change existing law. Pursuant to clause 3(d)(2)(A) of rule XIII of the Rules of the House of Representatives, the Committee estimates that implementation of H. Res. 22 will not significantly increase administrative costs.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this resolution does not provide new budgetary authority or increase tax expenditures.

OVERSIGHT FINDINGS

In accordance with clause 4(c)(2) of rule X of the Rules of the House of Representatives, the Committee states that no oversight finding or recommendation have been made by the Committee on Government Reform with respect to the subject matter contained in H. Res. 22.

In accordance with clause 2(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter contained in H. Res. 22 are contained in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

H. Res. 22 does not authorize funding. Therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives is inapplicable.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, Section 8, Clause 18 of the Constitution of the United States.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the resolution does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this resolution.

FEDERAL MANDATES STATEMENT

H. Res. 22 contains no intergovernmental or private sector mandates as defined pursuant to section 423 of the Unfunded Mandates Reform Act and will not impose costs on state, local, and tribal governments.

DISSENTING VIEWS

In its effort to promote economic expansion, Congress has continually attempted to identify those barriers that inhibit business growth in the United States. A primary concern of Congress and the Small Business Committee has been identifying the needs of the small business sector that has an economic record of creating 75% of all new jobs.

H. Res. 22, referred to as “The Small Business Bill of Rights,” was originally offered as a resolution of the commitment of the House of Representatives to remove obstacles facing small firms and create an economic environment that fosters growth. The author of the legislation, Representative Keller, noted that he had met with twenty small business owners in his Congressional District who expressed what they thought were the top concerns of small businesses. The opinions of these business owners were the primary basis for the Bill of Rights found in the resolution. While these business owners expressed a number of concerns that are common to other business owners in America, their opinions did not reflect all the concerns of the broad sector of small firms across the United States.

At a Small Business Committee hearing on the resolution on March 8, 2005, it became clear that not only were the provisions in the resolution not necessarily the top priorities for all firms across the country, but that the resolution failed to include a number of provisions that would represent the needs of the various industries and different types of small businesses. Witnesses talked about the needs for access to capital, a federal marketplace that did not shut out small businesses, improved minority federal contracting programs, and that Social Security reform was on the mind of many entrepreneurs, among other issues. At previous hearings not related to the resolution, other issues facing small businesses had also been brought to the committee’s attention. The resolution also failed to provide for a commitment to minority owned businesses and addressing their unique needs. These were but a few of the issues that made the resolution incomplete.

Due to these findings, a markup with potential amendments was necessary to ensure that a Small Business Bill of Rights resolution would represent the cross-section of the diverse nature of small businesses in the United States. Unfortunately, the manner in which the markup occurred prevented this legislation from being improved to provide for a “Bill of Rights” that small businesses deserve. As a result, the resolution being discharged from the committee fails on a number of levels to include important provisions that affect nearly all or a significant portion of small businesses.

The most disturbing aspect of why these provisions were not included in the resolution is the process in which this bill is being discharged from the Committee. On April 7, 2005, the House Small

Business Committee held a markup on the resolution. Prior to the markup, Members of the Committee submitted a number of amendments to be considered. This was not intended to be an exclusive list of amendments, but ones that would likely be brought up. These were amendments to strengthen the resolution by including changes that had been discussed by multiple business owners who had come before the House Small Business Committee in the past, including the hearing that examined H. Res. 22.

Rather than allowing for a full and open debate of the amendments, the Chairman immediately ruled at the start of the markup that any Member offering an amendment would only have four minutes to advocate his or her amendment, as opposed to allowing a full and open discussion. Despite objections from Members who wished to have a full and open debate on the resolution, the Chairman and members of his party in the committee voted that debate would be limited. This was despite the fact that Members intended to offer a number of amendments to improve the bill and make it reflective of the small business community as a whole.

Not only did the Chairman cut debate on the five amendments that were considered, the Chairman ruled to cut off debate with pending amendments and a majority supported this motion. This unprecedented move prevented debate on at least two other amendments that were pending. These were amendments that would have strengthened the resolution to ensure all the needs of small businesses were a primary concern of the House of Representatives.

As a result, the manner in which the markup was conducted has prevented proper consideration of the resolution. Not only did the markup prevent adequate debate of amendments offered, but it allowed for the adoption of an amendment to the Small Business Bill of Rights that could arguably do more harm than good for small businesses.

RESOLUTION DOES NOT REPRESENT PRIORITIES OF MOST SMALL BUSINESSES

The resolution fails to be complete on a number of levels. It not only fails to address many issues that are important to small businesses, but in some cases it offers solutions that entrepreneurs do not view as the primary or best way to solve these problems.

The resolution recognizes that the issue of health care is a large concern for small businesses. In fact, for most small businesses in America it is often their number one issue. The resolution is short-sighted in its approach to this issue, as it offers only one solution to this problem. H. Res. 22 provides that small businesses should have "the right to join together to purchase affordable health insurance." This is a clear reference to the Association Health Plan (AHP) legislation that has been introduced in the House and Senate, but has not been enacted into law.

Many in the small business community support the AHP legislation, but there is clearly not unanimous agreement on its passage as the solution to the health care problem for small businesses. As noted in the majority views, the resolution is supposed to represent priorities with broad support from the small business community if it is to be included within the Bill of Rights section. Additionally,

even proponents of AHPs recognize that broader health care reform is necessary to bring down health insurance costs for small businesses. To identify only one solution to the health care problem reveals how this resolution is shortsighted in many ways and does not recognize the severity of the problem of affordable health care for small businesses.

Sections three and four of the Small Business Bill of Rights in the resolution are concerns for small businesses, but the language does not offer anything in terms of substance. It is clear that no one wants “frivolous lawsuits” or “unnecessary, restrictive regulations” and Congress should be doing something about them. There is one hundred percent support within the small business community to eliminate these problems. However, the language in the resolution appears to be a veiled reference at the debates that are going on in Congress related to these issues and insinuating that some in Congress are working to maintain these “restrictive regulations” or “frivolous lawsuits.” A more effective approach would be to recognize that there must be a balance between protecting public policy concerns (i.e. environment, safety) and ensuring small firms are not subject to unwarranted regulations. Instead, the resolution only recognizes the obvious.

Additionally, when it comes to top priorities of small businesses, lawsuits are not necessarily on the top of many small business concerns. The National Small Business Association did not mention the issue in its top ten items at the hearing on H. Res. 22; National Federation of Independent Business (NFIB) in their latest list (2004) of small business “Problems and Priorities” ranked lawsuits 64th out of a list of 75 named problem areas; and the representative from the Small Business and Entrepreneurship Council spent only two short paragraphs discussing lawsuits in her written testimony on H. Res. 22.

In contrast, the resolution failed to include a number of important provisions to small businesses. It is for this reason that a number of amendments were offered, or attempted to be offered, to ensure an adequate and representative Small Business Bill of Rights. While there was one amendment that was adopted, the bill being discharged remains problematic due to the process in which these amendments were considered, as discussed below.

ADOPTED AMENDMENT

The one amendment that was adopted by the Committee in the April 7, 2005 markup did nothing to strengthen the resolution. It merely served to touch on broad issue areas, but did nothing to strengthen the “Bill of Rights” of small businesses. Rep. Keller offered an amendment to H. Res. 22 at the markup that was adopted by a voice vote. The amendment made several additions to the preamble and to the “rights” section. The amendment does not address other issues of importance to small businesses, namely the importance of minority business development and the role entrepreneurs play in economic development. As a result, the majority has cherry-picked the legislation’s priorities, choosing to ignore such issues of importance to the nation’s minority and low-income individuals. In addition, the amendment does not recognize the impact that Social Security reform proposals would have on small businesses.

Specifically, the amendment adds language noting the complexity of the tax code and the tendency of the tax code to discriminate against small businesses. In addition, the amendment adds general language noting the importance of affordable energy sources and small businesses' need for capital and credit. Finally, the amendment states that contract bundling has dried up opportunities for small business owners.

In the section detailing small business rights, the amendment added the following rights:

- The right to relief from high energy costs, to be accomplished by reducing the nation's reliance on imported sources of energy, and encouraging environmentally-sound domestic production and energy conservation.
- The right to equal treatment, as compared to large businesses, when seeking access to start-up and expansion capital and credit.
- The right to open access to the government procurement marketplace through the breaking up of large contracts to give small business owners a fair opportunity to compete for federal contracts.

While the "rights" for energy and contracting issues are specific, the "right" for the access to capital issue is vague and ambiguous. Large businesses access capital differently than small businesses do, oftentimes through the issuance of corporate bonds, a loan syndication, or asset securitization. Conversely, small businesses typically rely on loans from local lenders, credit cards, or borrowing from family and friends. It would be highly inefficient and overly complex to expect small businesses to access capital through Wall Street mechanisms, as larger businesses do. Instead, small businesses need affordable business loans that they can access in their local communities. These are just a few examples of why that even with the amendment, the resolution is incomplete.

This amendment that was adopted could also actually weaken small businesses ability to access the federal marketplace. With the change, the resolution would put Congress on record recognizing that contract bundling is an acceptable practice in certain situations. The Keller amendment attributes the practice by federal agencies of "unsound" contract bundling to the diminishing number of small business contracting opportunities. There is substantial concern that the Keller amendment may have the result of encouraging the bundling of contracts and weakening existing small business protections.

The Committee has historically been strongly in favor of efforts to increase small business participation in the federal marketplace. Recognizing that contract bundling is one of the most significant barriers eliminating small business opportunities, the Committee has held numerous hearings over the past 10 years, as well as proposed and reviewed legislative solutions to this problem.

The language contained in the Keller amendment on this issue has the effect of lessening the Committee's previously strong advocacy for increased small business participation, by implying that not all contract bundling is harmful to small firms. This position is not only contrary to the position of the Committee over the years, but is also in contravention of the President's contract bundling initiative.

The language in the Keller amendment states that there shall be no “unsound” contract bundling. Advocates of harmful contract bundling will interpret such language to show that there are situations where there is sound contract bundling—in other words—it is good public policy in certain situations to bundle federal contracts. Such an addition to the Bill of Rights could put the House of Representatives as favoring certain types of contract bundling.

This is in stark contrast to the current public policy goals of Congress. It has always been the position by Congress that contracts should not be bundled. It is the reason that there is a twenty three percent contracting goal for small businesses. This goal was created as a device to end the practice.

As such, Members attempted to amend the resolution and the Keller amendment but were stymied by the process that the resolution was considered.

AMENDMENTS OFFERED TO STRENGTHEN H. RES. 22 THAT WERE DEFEATED OR NEVER CONSIDERED BEFORE SMALL BUSINESS COMMITTEE

Amendment on the 7(a) loan program

An amendment was offered by Rep. Melissa Bean, which would have put the Committee on record in support of funding the 7(a) loan program and lowering lending fees on small business owners—in effect, reversing the decision made in late 2004 to increase such fees. Of particular concern is that the Federal Reserve’s continued increase of short-term interest rates, coupled with pressures from the near-record budget and trade deficits, will exert upward pressure on commercial interest rates. This will make it harder for small businesses to access affordable capital—highlighting the need for the 7(a) program, the federal government’s primary business lending program.

Despite the recent success of the 7(a) loan program in making capital more affordable for entrepreneurs, during the last four years, opponents of the 7(a) program have attempted to constrain the success of this lending initiative. The program’s opponents—primarily the Bush administration and Republican leadership—have underfunded the program, implemented a series of caps, imposed burdensome restrictions, and shut down the program in its entirety.

Perhaps the most notable action taken against the program in recent years was the decision in November 2004 to impose higher fees—essentially a new tax—on business owners seeking capital. This proposal—contained in the president’s FY 2005 budget request—marks the first time that government funding for this program was eliminated, and the entire cost for the program is borne by small businesses and their lenders.

For smaller loans less than \$150,000, fees are doubled from 1 percent to 2 percent, which translates into nearly \$1,500 more in upfront closing costs for entrepreneurs. For a loan of \$700,000, this would raise the fees by approximately \$3,000. As a result of these fee increases, many small businesses will be unable to access the capital they need to hire new employees or expand their operations.

This fee increase has reduced the demand for the 7(a) program. For the last quarter of FY 2004, the program provided \$3.94 billion in 7(a) loans. Since these fees were raised on small businesses, loan volume has decreased to only \$3.56 billion for the most recent quarter—a decline of nearly half a billion in lending to small businesses. And, last January, after the program was shutdown and there was a cap in place—the program averaged \$56 million in loans. But this January, as a result of the Bush administration's higher fees, the program provided \$47 million in loans per day. This is nearly \$10 million less per day in loans to our nation's entrepreneurs.

The original mission of the 7(a) program was to provide entrepreneurs who could not access traditional capital markets with a source for affordable loans. The recent moves have reoriented the program away from this original mission, making the program too costly for many small businesses that are unable to attract financial backing, but that nevertheless have sound commercial ventures. As a result, gaps in the capital markets will increase—turning back the clock to a time when only the strongest and most creditworthy businesses received financing.

This amendment was defeated by a recorded vote.

Amendment to keep regulatory burdens low for small businesses

Representative Raul Grijalva offered an amendment to ensure that any reforms to the Social Security system would not unfairly burden small businesses. Representatives of Women Impacting Public Policy who testified at the hearing on H. Res. 22 noted that Social Security Reform was the third highest concern for their members. This amendment which was voted down before the committee would require that Congress recognize the impacts that Social Security reform, specifically private savings accounts, would have on small businesses. This amendment addressed the issue of private savings accounts as part of Social Security reform and recognized that these accounts would increase the administrative costs borne by small firms.

Creating private accounts could have a significant impact on small businesses, especially in terms of increased administrative costs. The issue here is that many small businesses do not have 401(k)'s or other pension plans in place because of the high costs, and adding private account would create similar costs. Requiring them to help set up private savings accounts could prove to be extremely costly. For example, it costs a ten-person firm about \$300 per employee for the costs associated with operating a comparable retirement plan.

If small businesses were responsible for helping workers set up these private savings accounts, it could create costs that should not be borne by them. For the nearly 70% of all small firms who have never offered a retirement plan and have no familiarity with working with any sort of private accounts, there would be significant startup costs.

The amendment recognized that the Social Security private savings accounts would create a significant burden on this nation's small businesses. It is for this reason, this amendment states that private savings accounts should not be part of the solution because

they will significantly increase administrative costs for small businesses.

The amendment was defeated by a recorded vote.

Amendment on small business access to the federal marketplace

Given that small businesses comprise 97 percent of all businesses, and yet consistently receive less than 23 percent of all federal contract dollars, an amendment was offered by Ranking Democratic Member Nydia Velázquez to the Keller Amendment to strengthen the role of small businesses in the federal marketplace. While the Keller Amendment to H. Res. 22 addresses increasing the ability of small business to penetrate the federal marketplace, it is insufficient in that it makes no mention of the major issues that are preventing small companies from receiving fair access.

Over the past four years, the federal government's buying has increased by \$100 billion, and yet the statutory small business goal of 23 percent has not been achieved, costing these companies billions of dollars in lost contracting opportunities. Unfortunately, the loss to small businesses is, at best, a guess. Because the federal government has not been accurately keeping track of small business participation in government contracting, the losses to small businesses may be much greater. In December of 2004, the Small Business Administration's Office of Advocacy reported that \$2 billion counted as small business achievements in FY 2002 should actually have been reported as large business contract awards. The Keller Amendment to H. Res. 22 failed to recognize that awards to large businesses are being counted towards the small business achievement.

One of the biggest obstacles to increased small business participation in the federal marketplace is the propensity of agencies to combine contracts that could be performed by small companies, into contracts that are too big for them to compete. While the Keller Amendment to H. Res. 22 promised small businesses "open access" to the federal marketplace, the amendment does not recognize the assistance small businesses need.

The Velázquez amendment would have recognized that small businesses should be given the right to challenge contracts that are unfair to them. Given that agencies are the ultimate deciding factor as to whether or not a bundled contract should proceed, small firms should have the ability to a fair analysis when their contracts are taken away due to consolidation.

Beyond this, small firms should have the right to see agencies penalized if they do not achieve their small business goals as a result of bundled contracts. Equally importantly, small businesses deserve the right to know that their participation in the federal marketplace is being accurately counted.

The Velázquez amendment to the Keller amendment addressed flaws in the Keller amendment. While the Keller Amendment to H. Res. 22 attempted to focus on the ability of small businesses to participate in the federal marketplace, it failed to address barriers that must be overcome before full small business access to government contracts is a reality.

These provisions were all included in legislation that was unanimously passed out of the Small Business Committee in 2003 as

part of the SBA reauthorization bill, H.R. 2802. Unfortunately, these provisions were left out of the legislation passed by Congress in 2004.

The Velázquez amendment failed on a recorded vote.

AMENDMENT ON CONTRACT BUNDLING

According to a report prepared by the Office of Management and Budget, contract bundling has been the cause for the number of small business prime contracts declining by 56 percent from fiscal year 1991 to fiscal year 2000. Contract bundling—the practice of combining contracts that displace small businesses—is one of the biggest barriers small businesses face in their attempts to access the federal marketplace.

As noted above, Representative Keller introduced an amendment addressing this important small business issue. But, because Rep. Keller's amendment contends that “unsound” contract bundling has reduced government procurement opportunities for small businesses, it can be therefore construed that “sound” contract bundling is not particularly troublesome for small firms.

An amendment was introduced by Ranking Democratic Member Nydia Velázquez to strike the word “unsound” from the Keller amendment. By its very definition, contract bundling is never good for small firms.

The Velázquez amendment was an attempt to ensure that the Committee on Small Business does not go on the record as supporting any contract bundling that displaces small firms from the federal marketplace. According to a report by the Small Business Administration's Office of Advocacy, “for every increase of 100 bundled contracts there is a decrease of 60 contracts to small businesses.”

Recognizing that contract bundling is one of the primary reasons for decreasing small business participation in the federal marketplace, the Velázquez amendment was introduced to ensure that Congress addresses this important small business concern. The reduced competition that will occur through the elimination of small business participation in the federal marketplace through the practice of contract bundling, will ultimately result in higher costs to taxpayers and lower quality goods and services purchased through government contracts.

The Velázquez amendment failed on a recorded vote.

In addition to these amendments that were considered, Members were denied consideration of additional amendments when the Chairman ruled to cut off debate. This was despite the fact these amendments were submitted in a timely manner. These amendments, discussed below, were designed to strengthen the resolution.

Amendment on minority business programs

While minority individuals comprise nearly one-third of the population, only 15 percent of businesses are minority-owned. These companies employ 5 million people and generate nearly \$600 billion in revenue.

Given the gap between the number of individuals and the business ownership rate, it is clear that an entrepreneurial divide exists in this country. One of the most significant reasons for this di-

vide is the fact that programs designed to grow and develop minority-owned companies have not seen legislative updates for nearly 20 years.

Representative John Barrow and Representative Gwen Moore introduced an amendment to bridge this entrepreneurial divide. This amendment did not receive Committee consideration during the markup as the Chairman chose to table the motion rather than allow Representatives Barrow and Moore time to be heard on their amendment. The majority agreed to table the motion.

This amendment recognized that programs to assist minority entrepreneurs have been allowed to stagnate without important changes to bring these programs into the 21st century. Minority business owners deserve the right to have these important initiatives modernized, sufficiently funded, and supported.

Programs focused on minority entrepreneurs were designed to promote the competitive viability of these companies. And they have been successful. However, given the changes in the way the federal government buys goods and services as a result of acquisition reform legislation promulgated in the mid-1990s, minority business development programs are often viewed as antiquated and in disrepair.

One of the consequences of acquisition reform was contract bundling. Programs designed to enhance the competitiveness of minority entrepreneurs have not been modified given these new realities in the federal marketplace.

Equally important, new programs have been added targeted at other deserving sectors of the small business community. Unfortunately, no corresponding changes were made to minority business programs to ensure that new initiatives did not detract from the share of the federal marketplace occupied by minority entrepreneurs. Additionally, none of the new initiatives have the same barriers as minority business development programs.

While programs do exist that focus on enhancing the ability of minority business owners to gain access to the federal marketplace—such as the Small Business Administration’s 8(a) program—they have been marginalized and ignored. Large businesses are able to take advantage of 8(a) status to receive contracts with little, if any, work performed by company employees. SBA has delegated its business development responsibilities to government buying agencies. Even though technical assistance is a critical aspect of growth to minority entrepreneurs, in 25 years the Small Business Administration has not developed policy and guidance on how to accomplish this.

The result of this inaction has harmed minority-owned businesses. Over the past four years, the federal government’s goal for contracting with minority entrepreneurs has not been achieved, costing these companies billions of dollars in lost contract opportunities.

The Barrow-Moore amendment focused on enhancing and revitalizing programs designed to grow businesses owned by minority individuals. Without immediate attention, these important initiatives will slip further and further behind, harming the development of these companies. The Barrow-Moore amendment recognized these concerns and would have gone a long way towards ensuring that

minority business owners retain their place as a vibrant part of the U.S. economy.

The amendment was never considered due to the motion to cut off debate prior to its consideration.

Microloan/economic development amendment

The purpose of this amendment was to put the Committee on record in support of the Microloan program, which the administration has proposed to eliminate in its FY 2006 budget. Last year, the administration also proposed to eliminate this program, but Congress acted to restore funding. As a result, the program will provide \$15 million in loans and \$14 million in technical assistance during FY 2005. In attempting to abolish the program, the administration wrongly contends that very small loans are more widely available now than they were a decade ago when the SBA began the Microloan program. According to a recent SBA study, the availability of small loans has declined in recent years.

In addition, while financial institutions have been actively lending loan amounts below \$100,000, they have not been lending to those types of businesses that would typically access funds through the Microloan program. Bank-delivered programs—like the 7(a) loan program—will not lend to the types of borrowers that use the Microloan program. The typical Microloan borrower would not qualify for a 7(a) loan due to any number of reasons, including an imperfect credit history, lack of collateral, or lack of business training.

Microintermediaries work with potential borrowers to fully develop their business proposals, greatly increasing the likelihood of an entrepreneur's success. Banks often do not service such borrowers, leaving many would-be entrepreneurs without any means, other than high-priced credit cards, to secure capital.

The administration also contends that programs other than the 7(a) program offer duplicative services. The Microloan program, however, is the only program that combines funding and technical assistance—an important combination for many entrepreneurs looking to start a business. In addition, the administration terminates, reduces funding, or increases the costs for entrepreneurs for nearly all of the programs aimed at the segment of business owners that the Microloan program was developed to serve. This includes an elimination of support for PRIME and the New Markets Venture Capital program.

The Microloan program fills an important need in the capital markets—small loans to startups. During the past few years, scores of Americans weathered the economic downturn by starting their own business—many relying on the Microloan program for funds and assistance. By cutting this program, it will limit the potential for many individuals to become self-sufficient and will prevent communities from adding the new jobs they need to grow.

The amendment was never considered due to the motion to cut off debate prior to its consideration.

CONCLUSION

While this resolution is non-binding, it is intended as a way for the House of Representatives to recognize the needs and concerns

of America's small businesses. Unfortunately, due to the process by which this bill was considered and the lack of a bipartisan approach to address the legislation to meet the needs of small businesses, H. Res. 22 does not include a Bill of Rights that small businesses deserve.

Not only does this resolution fail to include a number of important concerns for small businesses, it contains provisions that many entrepreneurs would either not necessarily agree with or disagree with altogether. The failure to include many issues facing these entrepreneurs in the Bill of Rights section demonstrates how this bill does not represent the concerns of Main Street America.

While it may have been possible to include these issues, the process under which the bill was debated has prevented a discussion on these issues. The decision by the majority to impose debate restrictions on certain amendments and cut off debate completely on additional amendments prior to full consideration was simply wrong. To deny Members the right to offer an amendment during a markup is an affront to the democratic process. Only with a full and open debate can it be ensured that Members have an opportunity to be heard and that those affected by any resolution or legislation are adequately represented.

In order to ensure this bill represents the concerns of small businesses, the resolution must be strengthened. The resolution has not been fully debated before the committee of jurisdiction and as a result, it has failed to include a number of important priorities.

The only way to achieve a representative Bill of Rights is to allow for a full debate on this resolution to the House floor under an open rule. This would allow for Members who were denied the opportunity to either fully debate their amendments or debate them at all, to do so. This will ensure that the resolution is one that the entire House of Representatives can support. It will allow for the House of Representatives to consider the importance of such issues as access to affordable capital, changing the federal marketplace to meet the needs of small business, reducing concern over regulatory issues and other important matters. Without these issues being addressed, the Bill of Rights in H. Res. 22 will be incomplete.

NYDIA VELÁZQUEZ.

